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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,347	08/14/2001	Florian Pestoni	ARC920010018US1	6681

26381 7590 08/29/2005
LACASSE & ASSOCIATES, LLC
1725 DUKE STREET
SUITE 650
ALEXANDRIA, VA 22314

EXAMINER

FLEARY, CAROLYN FATIMAH

ART UNIT	PAPER NUMBER
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2152

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/928,347

Applicant(s)

PESTONI ET AL.

Examiner

Carolyn F. Fleary

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

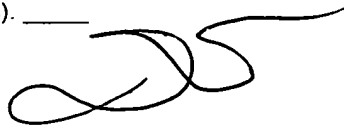
4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
SEE ATTACHMENT TITLED Advisory Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: Notice of Non-Compliant Amend.


Dung C. Dinh
Primary Examiner

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

09/928,347

Examiner

Carolyn F. Fleary

Applicant(s)

PESTONI ET AL.

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The amendment document filed on _____ is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: All claims being currently amended must be presented with markings to indicate the changes that have been made relative to the immediate prior version. The changes in any amended claim must be shown by strike-through (for deleted matter) or underlining (for added matter).

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Advisory Action

1. Applicant's arguments filed 08/15/05 have been fully considered but they are not persuasive for the reasons noted below.
2. In response to applicants Argument of remarks dated 08/15/2005 "examiner has not provided evidence for such a motivation or suggestion for the combination of the Noll and Hosken reference" as recited on page 12 of remarks, motivation and suggestion have been provide in office action dated 5/9/2005 on page 2 section 1. Both Noll [0039] and Hosken (col. 2 ll. 23-25) provide motivation and suggestion noted in said office action.
3. In response to applicants argument in remarks dated 08/15/2005 "Noll does not teach dynamically allocating bandwidth to a plurality of communication channels" a noted on page 12, Examiner respectively disagrees as is stated and pointed out in response to said argument in office action dated 5/9/2005 on page 3 sec 3a. Said response of said office action incorporated herein. A further response to said argument is provided below.

Noll clearly describes dynamic allocation of bandwidth to a plurality of channels in an embodiment which comprises a NOC-12 allocating low and high bandwidth to virtual channels (124) depending on the size of content (See [0042][0044][0057]). As such Noll fully discloses the claimed limitation dynamically allocating bandwidth to a plurality of communication channels.
4. In response to applicant's argument in remarks dated 08/15/2005 "Examiner has failed to point out the requirement of multiple users and the collation of said preferences", Examiner disagrees. Applicant is directed to page 4 section b. Office action dated 5/9/2005

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of where a response to argument regarding multiple users is disclosed which is also incorporated herein.

The suggestion of multiple users is clearly disclosed in Noll as Noll in discloses a need to offer content to many users (e.g. consumer PC's [0005], clients [0006], user machines [0044]). It is clear that the Noll invention services multiple users and as such meets said requirement of multiple users as argued by Applicant. The existence of multiple users is obvious, to one of ordinary skill in the network art, as Noll discloses process such as collecting feedback, allocating channels and distributing content, which are typical functions, used to delivery content to more than one user. Hosken also discloses multiple users as shown in response to augment on page 5 section 4 of said office action hence another motivation to modify Noll by Hosken in order to delivery personalized content. Furthermore Noll describes collation of preferences as is shown by Examiners response on page 4 sec col. of Office action dated 5/9/2005.

5. In response to applicants on page 13 in remarks dated 08/15/2005, "Hosken does not describe or suggest the motivation of allocation of bandwidth to a plurality of channels, nor use of channels, Examiner has noted in the office action dated 5/9/2005 and above that Noll has disclosed such features. Examiner interprets a channel as a path along which a communication signal is transmitted. In this case Hosken provides said allocation of bandwidth to a plurality of channels and also provides content on said channels. Hosken as streams of content delivered to users (col. 4 ll. 4 ll. 39-52) based on specific criteria (feedback, profile preferences etc See also col. 2 ll. 36-51).

6. In response to applicant's argument in remarks dated 08/15/2005 that the references fail to show certain features of applicant's invention, it is noted that the features upon which

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applicant relies (i.e., "allowing for a collection of content in a channel based on .. multiple users' preferences" as recited on page 13-14 of remarks dated 08/15/2005,) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

7. In response to Applicants statement on page 14 paragraph 3 ("on page 3..) in remarks dated 08/15/2005, regarding inconsistency, Applicant has mistakenly taken an argument "Hosken does not describe dynamically allocation user access based on user's preferences" provided by applicant in remarks dated 03/08/2005 as that of the Examiner and as such arguments regarding said statement are not valid.

Responses to Applicants previous arguments as provided in remarks/amendments provided on 05/09/2005 are incorporated by reference.

Conclusion

8. **THE OFFICE ACTION DATED 05/09/2005 REMAINS FINAL.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn F. Fleary whose telephone number is (571) 572-7218. The examiner can normally be reached on 8:30 - 4:00.

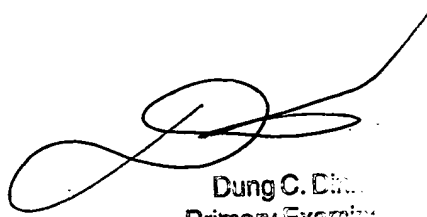
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Carolyn F Fleary
Examiner
Art Unit 2152

CFF



Dung C. Dinh
Primary Examiner